IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

DATAQUILL LIMITED, *Plaintiff*, v. ZTE CORPORATION, ET AL., *Defendant*.	§ § § § § § § § § § § §	CASE NO. 2:13-CV-633-JRG
DATAQUILL LIMITED, *Plaintiff*, v. ZTE CORPORATION, ET AL., *Defendant*.	§ § § § § § § § § § § § §	CASE NO. 2:13-CV-634-JRG

MEMORANDUM OPINION AND ORDER

Before the Court is the Renewed Motion for Judgment as a Matter of Law, or Alternatively for Remittitur and/or a New Trial, Pursuant to Federal Rules of Civil Procedure 50 and 59 (Dkt. No. 170[1]) ("Mot.") filed by Defendant ZTE (USA) Inc. ("ZTE"). Plaintiff DataQuill Limited ("DataQuill") opposes the Motion. (Dkt. No. 171 ("Resp.").) For the reasons set forth below, the Court finds that ZTE's Motion should be **DENIED** as to the issues of the October 13, 1993 Priority Date, Validity of the Patents-in-Suit, and the alleged Erroneous Claim Constructions. The damages issues raised by ZTE's Motion are **CARRIED**.

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[1] Unless otherwise indicated, all references to the docket are to filings from the -633 case.

I.   BACKGROUND

The Court held a jury trial in this case on June 15, 2015, and the jury returned a unanimous verdict on June 18, 2015. The jury found that that the asserted claims were not invalid; that the asserted claims were infringed; that ZTE had willfully infringed; and that $31,500,00.00 was the "sum of money, if paid now in cash" which "would fairly and reasonably compensate DataQuill for ZTE's infringement up through March 2015." (Dkt. No. 29 in the -634 case ("Verdict").) ZTE asserts that, in the nearly 20 hours of testimony presented at trial, the jury did not have sufficient evidence for its findings.

II.   Applicable Law

Upon a party's renewed motion for judgment as a matter of law following a jury verdict, the Court asks whether "the state of proof is such that reasonable and impartial minds could reach the conclusion the jury expressed in its verdict." Fed. R. Civ. P. 50(b); *Am. Home Assur. Co. v. United Space Alliance*, 378 F.3d 482, 487 (5th Cir. 2004). "The grant or denial of a motion for judgment as a matter of law is a procedural issue not unique to patent law, reviewed under the law of the regional circuit in which the appeal from the district court would usually lie." *Finisar Corp. v. DirectTV Group, Inc.*, 523 F.3d 1323, 1332 (Fed. Cir. 2008). "A JMOL may only be granted when, 'viewing the evidence in the light most favorable to the verdict, the evidence points so strongly and overwhelmingly in favor of one party that the court believes that reasonable jurors could not arrive at any contrary conclusion.'" *Versata Software, Inc. v. SAP Am., Inc.*, 717 F.3d 1255, 1261 (Fed. Cir. 2013) (quoting *Dresser-Rand Co. v. Virtual Automation, Inc.*, 361 F.3d 831, 838 (5th Cir. 2004)).

Under Fifth Circuit law, a court is to be "especially deferential" to a jury's verdict, and must not reverse the jury's findings unless they are not supported by substantial evidence.

Baisden v. I'm Ready Productions, Inc., 693 F.3d 491, 499 (5th Cir. 2012). "Substantial evidence is defined as evidence of such quality and weight that reasonable and fair-minded men in the exercise of impartial judgment might reach different conclusions." *Threlkeld v. Total Petroleum, Inc.*, 211 F.3d 887, 891 (5th Cir. 2000). A motion for judgment as a matter of law must be denied "unless the facts and inferences point so strongly and overwhelmingly in the movant's favor that reasonable jurors could not reach a contrary conclusion." *Baisden* 393 F.3d at 498 (citation omitted). However, "[t]here must be more than a mere scintilla of evidence in the record to prevent judgment as a matter of law in favor of the movant." *Arismendez v. Nightingale Home Health Care, Inc.*, 493 F.3d 602, 606 (5th Cir. 2007).

In evaluating a motion for judgment as a matter of law, a court must "draw all reasonable inferences in the light most favorable to the verdict and cannot substitute other inferences that [the court] might regard as more reasonable." *E.E.O.C. v. Boh Bros. Const. Co., L.L.C.*, 731 F.3d 444, 451 (5th Cir. 2013) (citation omitted). However, "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge." *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000). "[T]he court should give credence to the evidence favoring the nonmovant as well as that 'evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that that evidence comes from disinterested witnesses.'" *Id.* at 151 (citation omitted).

III.   Analysis

A.   Validity

An issued patent is presumed valid. 35 U.S.C. § 282; *Fox Grp., Inc. v. Cree, Inc.*, 700 F.3d 1300, 1304 (Fed. Cir. 2012). ZTE has the burden to show by clear and convincing evidence that the asserted claims were anticipated by or obvious over the prior art. *Microsoft Corp. v. i4i*

Ltd. P'ship, 131 S. Ct. 2238, 2242 (2011). To prevail on judgment as a matter of law, moreover, ZTE must show that no reasonable jury would have a legally sufficient evidentiary basis to find for DataQuill. Fed. R. Civ. P. 50. "Generally, a party seeking to invalidate a patent as obvious must demonstrate by clear and convincing evidence that a skilled artisan would have had reason to combine the teaching of the prior art references to achieve the claimed invention, and that the skilled artisan would have had a reasonable expectation of success from doing so." *In re Cyclobenzaprine Hydrochloride*, 676 F.3d 1063, 1068–69 (Fed. Cir. 2012) (internal quotation marks omitted).

ZTE argues that "[n]o reasonable jury could have concluded that the patents-in-suit are valid in light of ZTE's clear evidence of invalidity." (Mot. at 23.) More specifically, ZTE argues that "all of the asserted claims are invalid based on alternative grounds involving three independent primary prior art references—the Titus EO Application, IBM Simon, and [U.S. Patent No. 5,426,594 ("the Wright patent")]." (*Id.* at 24.)

1) The Priority Date

As an initial matter, the Court notes that two of the three primary prior art references, the Titus EO Application and IBM Simon, do not qualify as prior art if the Patents-in-Suit are entitled to the priority date of United Kingdom Application No. 9321133 ("UK Application"), the application to which the Patents-in-Suit claim priority. ZTE argues that the Court should find that the priority date of the Patents-in-Suit is actually later than the October 13, 1993 date of the UK Application, and, in fact, is sometime in 1994. If, but only if, the 1994 priority date applies would the Titus EO Application and IBM Simon references qualify as prior art. ZTE argues that, because two limitations of the Patents-in-Suit, the "microphone" and the "integral cellular phone," were not present in the UK Application, the Patents-in-Suit cannot claim priority from

the 1993 UK Application. (Mot. at 18–19.) ZTE argues that "DataQuill admitted that material was added between the filing of the UK Application and the [International Application No. PCT/GB94/02101 (PCT Application)]." (*Id.* at 19.) ZTE further argues that "DataQuill's witnesses testified that there is no actual disclosure in the UK Application of either 'microphone' or 'integral cellular phone.'" (*Id.*)

DataQuill responds by arguing that "Dr. Rhyne testified that the UK Application discloses every limitation of the asserted claims" and "prepared a lengthy document (DX 57) explaining his opinions and identifying the specific passages where the UK Application supports all the claim limitations." (Resp. at 27–28.) DataQuill also points to the following excerpt from the UK Application as proof of the "cellular phone technology" limitation:

> Also, in the case of the pen 10 without a base station for the modem, the pen could be provided with cellular phone technology rather than a socket for a telephone plug so that data could be downloaded via a telephony link without needing to be connected to a physical telephone cable.

(DX 18, at 19.) DataQuill argues that "[t]here is no dispute that this passage discloses a cellular phone." (Resp. at 30). As support, DataQuill points to the following testimony from Dr. Konchitsky:

> Q. Okay. But you agree that the disclosure speaks to a cellular phone, and that's why you've drawn it here, correct?
>
> A. Yes.

(6/17/2015 A.M. Trial Tr. (Konchitsky), Dkt. No. 40 in the -634 case, at 82:11–14); *see also* (6/18/2015 A.M. Trial Tr. (Rhyne), Dkt. No. 43 in the -634 case, at 91:11–92:9.) DataQuill further argues that a "cellular phone necessarily discloses a microphone," (Resp. at 30), and points to the following testimony from Dr. Konchitsky as support:

> Q. (By Mr. Payne) A cellular phone, by definition, has a microphone, correct, sir?

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